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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 TOMMY SLACK,

9 Plaintiff,

10 v.

11 MICHAEL WOODBURY, et al.,

12 Defendants.

CASE NO. C19-159 RSM-BAT

**ORDER DENYING MOTION TO  
FOR RULE 62 STAY OF  
JUDGMENT AND DIRECTING  
PLAINTIFF TO SET FORTH  
FACTS UNDER RULE 56**

13  
14 Plaintiff moves under Fed. R. Civ. P. 62 to “stay the proceeding of summary judgment  
15 until discovery have been complied with pursuant to Fed. R. Civ. P. 33 and 34.” Dkt. 45. Rule 62  
16 does not provide grounds for such relief and the court accordingly denies the motion.

17 Plaintiff’s motion for stay comes after the court has denied his motions to compel  
18 discovery and for reconsideration of the denial. The record plainly shows plaintiff failed to meet  
19 and confer with defense counsel by phone or in person as required by the court’s local rules.  
20 However, defendants have now moved for summary judgment and Fed. R. Civ. P. 56(d) which  
21 governs summary judgment states:

22 If a nonmovant shows by affidavit or declaration that, for specified  
23 reasons, it cannot present facts essential to justify its opposition,  
the court may:

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- (1) defer consideration of the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Rule 56(d) thus provides plaintiff with the opportunity to set forth the specific facts he needs to oppose defendants' motion for summary judgment and to request discovery limited to those facts if plaintiff cannot assert them through affidavits or declarations based upon information he already possesses. The Court accordingly **ORDERS:**

(1) Plaintiff's motion for a Rule 62 stay (Dkt. 45) is **DENIED**.

(2) If plaintiff can show by affidavit or declaration that, for specified reasons, he cannot present facts essential to justify opposition to the summary judgment motion, the court will consider granting plaintiff leave to discover those facts. The Court will only consider additional discovery limited to the specific facts plaintiff avers through affidavit that he cannot present to oppose the motion for summary judgment.

(3) Defendant's motion for summary judgment is noted for **August 2, 2019**. Plaintiff's opposition to the motion including any affidavits establishing plaintiff cannot present specific facts to oppose the motion must be received by the court no later than **Monday July 29, 2019**.

The Clerk shall provide a copy of this order to the parties.

DATED this 19<sup>th</sup> day of July, 2019.

  
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BRIAN A. TSUCHIDA  
United States Magistrate Judge

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